

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

CLYDE ASHLEY, JR., Petitioner

V.

NO. 4:94CV178-D-O

CHRISTINE HOUSTON, ET AL, Respondents

O P I N I O N

Petitioner, Clyde Ashley, Jr., an inmate at the Mississippi State Penitentiary, files this petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 seeking to have earned time restored which was lost as a result of a Rules Violation Report (RVR); to have the RVR expunged from his file; and to be provided with a copy of the records pertaining to this matter.

Petitioner was alleged to have attempted to escape on June 25, 1986, and was issued an RVR on that date. A hearing was held on the RVR on July 27, 1986, at which the petitioner plead guilty and admitted he committed the offense (see petitioner's Exhibit B, a copy of the proceedings of the RVR). The punishment was twenty (20) days in isolation, loss of all earned time prior to the date of the incident, and reduction in earned time class from I to IV.

Petitioner, at some point, attempted to appeal this action in forma pauperis to the Circuit Court of Sunflower County. The court denied his motion on the grounds that the appeal did not involve a criminal case and there is no right in the state courts of Mississippi to appeal in forma pauperis in civil actions. Nelson v. Bank of Mississippi, 498 So.2d 365 (Miss. 1986). Petitioner appealed this ruling to the Mississippi Supreme Court, which affirmed the lower court's decision on June 21, 1994.

Petitioner contends that the punishment relating to earned time should be set aside because the hearing on his offense was not held until twenty-five (25) days after the incident, which he believes is untimely.¹

After carefully considering the contents of the pro se complaint and giving it the liberal construction required by Haines v. Kerner, 404 U.S. 519 (1972), this court has come to the following conclusion.

Where loss of statutory good-time credits or solitary confinement are at issue, the United States Supreme Court has mandated certain procedural safeguards; advance written notice of

¹ Paragraph 9-14 of the Mississippi Department of Corrections Inmate Handbook states that the "Disciplinary Committee will conduct the disciplinary hearing as soon as possible but not later than ten (10) working days after their receipt of the Rule Violation Report unless additional time shall be required to complete investigations, obtain statements of witnesses, etc."

charges; written findings; and, generally, the right to call witness. Wolff v. McDonnell, 418 U.S. 539 (1974). A prisoner is also entitled to have the charges decided by a fair and impartial tribunal. Id. at 570-71. There is no indication whatsoever that petitioner was denied any of these rights.

We have stated that the federal courts cannot retry every prison disciplinary dispute; rather the court may act only where arbitrary or capricious action is shown. Smith v. Rabelais, 659 F.2d 539, 545 (5th Cir. 1981), cert. denied, 455 U.S. 992, 1025 S.Ct. 1619, 71 L.ED.2d 853 (1982). This means that prison disciplinary proceedings will be overturned only where there is no evidence whatsoever to support the decision of the prison officials. Id. [Reeves v. Pettcox, No. 93-4172 (5th Cir., April 29, 1994)].

Certainly there is no indication that the Disciplinary Committee acted in an arbitrary or capricious manner. There clearly is evidence that the petitioner committed the charged offense. In fact, he admitted it.²

A claim is cognizable under §2254 if it alleges violations of the federal Constitution, laws, or treaties. Rose v. Hodges, 423 U.S. 19 (1975). Twenty-five (25) days between the occurrence of an offense until action on it, does not approach an unconstitutional delay, even if the internal rules say that it should be done in ten

² Loss of earned time not only seems a very reasonable punishment for escape, by state statute it is also mandatory; "All earned time shall be forfeited by the inmate in the event of escape . . . " Miss. Code Ann. §47-5-139(3) (1972).

(10) days. There is no indication whatsoever that petitioner suffered any harm as a result.

Likewise, reducing the earned time classification for a prisoner who has attempted to escape seems entirely reasonable and does not present a constitutional question.

Therefore, considering the allegations contained in the petition, since no arguable factual or legal basis for a claim of constitutional dimension exists for the wrongs asserted therein entitling him to the relief sought, it is the opinion of the court that this petition be dismissed for failure to state a claim upon which relief can be granted.

A final judgment in accordance with this opinion will be entered.

THIS the _____ day of _____, 1994.

UNITED STATES DISTRICT JUDGE